

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 13-20667

SAM SMOLDERS,

Defendant.

ORDER ALLOWING DEFENDANT TIME TO CLARIFY HIS LETTER

Pending before the court is Defendant Sam Smolders's letter filed on the docket on July 21, 2014. The court originally referred this Defendant's case to Magistrate Judge Randon; however, for docket and efficiency reasons, the court will rescind its referral and resume responsibility for the case.

On September 18, 2014, the United States Attorney filed an information charging Defendant with illegally entering the United States by willfully and intentionally swimming across the Detroit River from Windsor, Ontario, Canada, to Detroit, Michigan. (Dkt. # 11, Pg. ID 18.) The next day, Defendant pleaded guilty to this single count of illegal entry, and Magistrate Judge Randon sentenced him to time served.

On July 21, 2014, the court clerk received a letter from Defendant disputing his guilty plea. In his letter, Defendant claims that he is an American citizen, and that he was improperly charged with illegal entry by an alien. (Dkt. # 15, Pg. ID 26–27.) He

further claims that because of “mutual U.S. Citizenship” Magistrate Judge Randon and the clerk “created an erroneous document” stating that he pleaded guilty.

It is unclear what relief Defendant requests. A motion to vacate sentence under 28 U.S.C. § 2255 requires Defendant to currently be in federal custody; however, Magistrate Judge Randon sentenced Defendant to time served, and Defendant has been released on his own recognizance since September 20, 2013. Perhaps Defendant seeks expungement of his conviction; however, the court is unaware of any authority granting it the power to do so. *See United States v. Lucido*, 612, F.3d 871, 875 (6th Cir. 2010). And to the extent Defendant seeks relief from a judgment or order pursuant to Federal Rule of Civil Procedure 60(a) due to a clerical mistake, he must say so and specifically identify what clerical mistake he seeks to correct. Regardless what type of relief Defendant requests, he must provide more than an indecipherable letter alleging a “trilateral” test of “mutual allegiance” to the United States. Accordingly,

IT IS ORDERED that the Defendant shall be given until **September 5, 2014**, to file a motion on the court’s docket, clearly setting out his factual allegations and requested relief. If Defendant does not choose to file a motion by this time, the court will disregard his letter.

IT IS FURTHER ORDERED that the court’s order of reference to Magistrate Judge Randon is RESCINDED.

s/Robert H. Cleland

ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: August 8, 2014

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, August 8, 2014, by electronic and/or ordinary mail.

s/Lisa G. Wagner
Case Manager and Deputy Clerk
(313) 234-5522